

CHAPTER 67:42:03  
FAMILY DAY CARE HOMES

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67:42:03:01. Definition of family day careDefinitions.

(1) "Family day care," means the provision of regular care and supervision of no more than 12 children including the provider's own children who are under the age of six years for part of a 24-hour period as a supplement to regular parental care; and

(2) "Registered helper," an employee or volunteer present in the facility to assist with the care of children.

Source: 4 SDR 2, effective July 25, 1977; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 10 SDR 48, effective November 21, 1983; 15 SDR 162, effective May 4, 1989.

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

Cross-References: Family day care defined -- Number of children allowed, SDCL 26-6-14.1; Definition of unregistered family day care, SDCL 26-6-14.8.

67:42:03:04.01. Maximum number of children allowed. A family day care provider may care for a maximum of 12 children, including the provider's own children who are under the age of six years. No more than four of the 12 children may be under the age of two years, and no more than two of these four children may be under the age of one unless there is a registered helper in the home. ~~If a provider cares for children under two years of age~~ registered helper is present in the home, no more than eight of the twelve children may be under the age of two and no more than four of the eight may be under the age of one ~~the provider must maintain an adult child ratio of one adult to four children for children under the age of two.~~

Source: 6 SDR 31, effective September 30, 1979; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 10 SDR 48, effective November 21, 1983; 15 SDR 162, effective May 4, 1989; 21 SDR 206, effective June 4, 1995; 31 SDR 40, effective September 29, 2004.

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-14.1, 26-6-14.2, 26-6-16.

Cross-Reference: Additional number of children in day care -- Staff-to-child ratios, SDCL 26-6-15.1.

67:42:03:06. Qualifications of a family day care provider. A family day care provider must meet

the following requirements:

- ~~—(1) The provider must be at least 18 years of age; and~~
- ~~—(2) The provider may not have on record a substantiated report of child abuse or neglect;~~
- ~~—(3) If the provider owes child support arrearages which total \$1,000 or more, the provider must have a satisfactory arrangement with the Office of Child Support Enforcement for the repayment of those arrearages;~~
- ~~—(4) The provider must be a stable, emotionally mature individual of reputable character; and~~
- ~~—(5) The provider shall demonstrate the ability to provide care for children that attends to the child's physical growth and development and to the physical, emotional, cognitive, and social needs of the child.~~

~~—Family members ten years of age and older or any other individual who is living in the home may not have a substantiated record of child abuse or neglect or a conviction of a crime of violence as defined by SDCL 22-1-2.~~

The provider's family and household composition and relationships may not adversely affect a child in care.

Source: 4 SDR 2, effective July 25, 1977; 7 SDR 66, 7 SDR 89, repealed July 1, 1981; 15 SDR 162, effective May 4, 1989; 20 SDR 223, effective July 7, 1994; 21 SDR 206, effective June 4, 1995; 31 SDR 40, effective September 29, 2004.

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 25-7A-56, 26-6-16, 26-6-23.2.

~~—Cross-References:~~

~~—Revocation or refusal to issue or renew license or registration for child abuse or violence, SDCL 26-6-23.1.~~

~~—Ability to provide care, § 67:42:01:06.~~

~~—Screening for substantiated reports of abuse and neglect, § 67:42:01:05.02.~~

~~—Notice to absent parent before restricting issuance of licenses, § 67:18:01:61.~~

~~—Administrative review and fair hearing before restricting issuance of licenses, § 67:18:01:62.~~

67:42:03:07.01. Qualifications of helpers. A family day care helper must be at least 14 years old. A helper under the age of 18 may be included in the adult-child ratio only if there is another adult present in the home. A helper who is under the age of 18 may not be left alone on the premises with children in care.

A helper must meet the requirements of §§ 67:42:03:07.02, and 67:42:03:07.03, ~~and~~ 67:42:01:05.02.

A volunteer filling the position of a helper must meet the requirements of this section.

Source: 15 SDR 162, effective May 4, 1989; 21 SDR 206, effective June 4, 1995.

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

67:42:03:07.02. Training. A family day care provider and helper must participate in a minimum of six hours of training every year. Three of the six hours of annual training may be from reading sources or televised or video programming. The training must be obtained from at least three of the following areas:

(1) ~~Basic first aid. This must occur during the first year of registration~~Child growth and development;

(2) ~~Program health and safety~~Detecting and reporting child abuse and neglect;

(3) ~~Learning environments~~Guidance and behavior management;

(4) ~~Child growth and development~~Food handling techniques;

(5) ~~Guidance and behavior management~~Identification and prevention of communicable diseases;

(6) ~~Detecting and reporting child abuse and neglect~~Program health and safety;

(7) ~~Communication and relations with staff~~Nutrition for children;

(8) ~~Food handling techniques~~Program management and regulation;

(9) ~~The identification and prevention of communicable diseases~~Communication and relations with staff;

(10) Cultural diversity;

(11) ~~Nutrition for children~~Learning environments;

(12) Age appropriate activities and planning;

(13) Professionalism;

(14) Partnerships with parents;

(15) Inclusion of all children; and

(16) Program management and regulation.

Before an initial registration is issued, the applicant must complete and become certified in infant-child cardio-pulmonary resuscitation (CPR) through ~~either the American Heart Association or the American Red Cross or another~~ an entity that provides the applicant with

hands-on skills testing as part of the training. The CPR certification must remain valid at all times.

Any individual supervising children around a body of water and any helper being left alone to supervise children must meet the training and certification requirements for CPR as contained in this section.

Before the department renews the registration certificate, the family day care provider must supply the department with documented evidence that the provider and helper have completed the required training.

Source: 15 SDR 162, effective May 4, 1989; 21 SDR 206, effective June 4, 1995; 31 SDR 40, effective September 29, 2004.

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

Cross-Reference: Water safety, § 67:42:03:20.

67:42:03:07.03 Staff records and hiring requirements. A family day care provider must maintain a record on each staff member. The record must include the staff member's name, age, address, telephone number, in-service training, dates of employment and separation, ~~a statement signed by the provider and the staff member acknowledging that the provider and staff member have reviewed and understand the provisions of chapters 67:42:01 and 67:42:03,~~ and a statement signed by the staff member which defines child abuse and neglect and outlines the staff member's responsibility to report all incidents of child abuse or neglect under the provisions of SDCL 26-8A-3 and 26-8A-8. The facility must make the personnel records available to the department for verification of the contents. The personnel records must be kept for six months after the staff member's employment ends.

Before hiring an individual to work at the facility, the provider must contact at least three references which may include the individual's former employers. The references may not be related to the prospective staff member. References must be in the form of a documented conversation or written letter and must be on record before hiring the individual.

Source: 21 SDR 206, effective June 4, 1995; 31 SDR 40, effective September 29, 2004.

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

[67:42:03:07.04 Staff health requirements.](#) ~~Each staff member must have a Mantoux tuberculin skin test at the time of employment before having direct contact with children. Individuals who react to the test but are without disease and who do not complete a preventive course of Isoniazid, INH, must annually demonstrate evidence of no active disease by a physical evaluation completed by a medical doctor. Individuals who have been infected by tuberculosis and have completed a minimum six-month course of INH and individuals who show no reaction to the test at the time of employment are exempt from further tuberculin evaluation for the purposes of this chapter. A copy of the tuberculin test reports and physical evaluations must be kept in the staff member's file and must be furnished to the department upon request~~Repealed.

[Source: 21 SDR 206, effective June 4, 1995.](#)

~~—General Authority: SDCL 26-6-16.~~

~~—Law Implemented: SDCL 26-6-16.~~

67:42:03:07.05. Qualifications of substitute providers. A substitute provider must be at least 18 years of age and may not have on record a substantiated report of child abuse or neglect. A substitute provider may not be utilized more than 12 hours per week. Prior to being left alone to supervise children, a substitute provider must complete the cardio-pulmonary resuscitation (CPR) requirements of § 67:42:03:07.02.

Source:

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

67:42:03:08. Health standards for children. Before admitting a child for care in a family day care home, the provider must require a child's parent or guardian to submit a written statement signed by a licensed physician, physician's assistant, certified nurse practitioner, or community health nurse or an immunization record from the South Dakota Immunization Information System showing the immunization status of the child and verifying that the child meets the minimum immunization requirements for the child's age as recommended by the South Dakota Department of Health.

The operator must ensure that immunization levels of all children are current. For children who begin the series late or are more than one month behind in immunizations, the immunization levels of these children must show current progress toward achieving adequate immunization levels as recommended by a physician, physician's assistant, certified nurse practitioner, or community health nurse. Immunization levels may be verified by an annual audit conducted by the Department of Health.

If a child suffers an illness during the day, the child must be separated from other children and the child's parents must be notified. The provider must notify the Department of Health if any child in the family day care home contracts a communicable disease. The provider must follow the Department of Health's recommendations for addressing a situation involving a communicable disease. The family day care home must have on file the name, address, and telephone number of each child's source of regular health supervision as well as other emergency medical information.

A child is exempt from meeting the minimum age-specific immunization levels if the child's parent or guardian has certification from a licensed physician stating that the physical condition of the child is such that a test or immunization would endanger the child's life or health or if the child's parent or guardian has signed a written statement that the child is an adherent to a religious doctrine whose teachings are opposed to such tests and immunizations.

Written permission from parents or guardians allowing for the child's emergency medical care must be obtained and maintained by the operator.

Source: 4 SDR 2, effective July 25, 1977; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 15 SDR 162, effective May 4, 1989; 21 SDR 206, effective June 4, 1995; 31 SDR 40, effective September 29, 2004.

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

Cross-References:

Tests and immunizations for communicable diseases required for admission to school -- Exceptions -- Rules, SDCL 13-28-7.1.

Records and reports on children in care of agencies -- Information confidential, SDCL 26-6-20.

Definition of "communicable disease," § 44:20:01:01.

67:42:03:08.01. Medications. Medications may only be administered with the written consent of the parent or guardian and only if the consent lists the name of the medication and the date or dates the medication is to be administered. Any medication administered to a child must be documented to include the dose, name of child, time and date administered, and signature of the person administering the medication. This documentation must be kept for six months. Medications must be kept in their original container with the original label. The label must contain legible directions for use, the expiration date, the child's name, and the physician's name. ~~A drug container without a label or with an illegible label is not permitted.~~ Medications must be stored in a place which is inaccessible to children. Medication requiring refrigeration must be placed in another container which is not absorbent and labeled "medication".

Source: 15 SDR 162, effective May 4, 1989; 31 SDR 40, effective September 29, 2004.

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

67:42:03:11.03. Exit requirements -- Drills. Each level of the family day care home used for the care of children must have two exits which are separate and remote from each other. Each of these exits must provide unobstructed travel to the outside. One of these exits must be a standard-sized door that meets the applicable code for the structure. The other exit may be a window which is easy to open from the inside without the use of tools.

A window used as an exit in a family day care home must provide a clear opening at least 20 inches wide and 24 inches high and must be at least ~~5.7~~5.0 square feet in area. There may be no more than 44 inches between the floor and the bottom of the window. If more than 44 inches exists between the floor and the bottom of the window, a stable and permanent platform must be used that raises the level of the floor such that the distance is 44 inches or less between the bottom of the window and the platform landing.

If storm windows, screens, or burglar guards are used, they must be provided with quick-opening devices which may be easily opened from the inside.

No room or space may be occupied for living or sleeping purposes which is accessible only by a ladder, by a folding stair, or through a trap door.

The home must have a written evacuation plan and must conduct at least four fire drills and one tornado drill each year. The tornado drill must be conducted at the beginning of summer. The provider must maintain written documentation as evidence that the drills were conducted.

Source: 7 SDR 66, 7 SDR 89, effective July 1, 1981; 10 SDR 48, effective November 21, 1983; 15 SDR 162, effective May 4, 1989; 21 SDR 206, effective June 4, 1995; 31 SDR 40, effective September 29, 2004.

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

67:42:03:11.05. Water supply. Water must be derived from a community water system or from a water system that is tested at least annually by the Department of Environment and Natural Resources or a laboratory certified by the Department of Health to conduct such tests. The water must be tested for bacteria and nitrate levels and must be safe for consumption. The provider must maintain written documentation of the test results. ~~The volume of water must be sufficient to meet the needs of the home.~~

~~—The hot water supply system must meet the hot water demands of the home.—~~Hot water to plumbing fixtures normally utilized by children in care must be at least 110 degrees Fahrenheit and may not exceed 120~~130~~ degrees Fahrenheit.

Source: 7 SDR 66, 7 SDR 89, effective July 1, 1981; 15 SDR 162, effective May 4, 1989; 21 SDR 206, effective June 4, 1995; 31 SDR 40, effective September 29, 2004.

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

Cross-Reference: Drinking water standards, ch 74:04:05.

67:42:03:11.06. Heating, ventilating, and lighting system. The family day care provider shall ensure that heating, ventilating, and lighting facilities are adequate for the protection of the children's health. ~~home must have a working heating system. The day care provider must maintain the temperature of the home between 65 and 75 degrees Fahrenheit during waking hours when children are present. At night the temperature may be no lower than 50 degrees Fahrenheit.~~

Unvented fuel-fired room heaters may not be used. A guard must be provided to protect the children from and restrict their access to hot surfaces and open flames.

Source: 7 SDR 66, 7 SDR 89, effective July 1, 1981; 10 SDR 48, effective November 21, 1983; 15 SDR 162, effective May 4, 1989; 21 SDR 206, effective June 4, 1995.

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

67:42:03:11.08. Food quality and storage. The family day care provider must comply with the following provisions:

(1) Food must be free from spoilage, filth, or other contamination and must be safe for human consumption;

(2) Fluid milk and fluid milk products used or served must be pasteurized and must meet Grade A quality as defined by SDCL 39-6-1;

(3) During storage, preparation, and serving, food must be protected from potential contamination, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs, sneezes, drainage, and overhead leakage or dripping condensation;

~~(4) Unless its identity is unmistakable, a bulk food such as cooking oil, syrup, salt, sugar, or flour not stored in the product container or package in which it was obtained must be stored in a container identifying the food by its common name;~~

~~(5)~~(4) Food which is removed from the original container or package in which it was obtained must be stored in a clean, covered, nonabsorbent container; and

~~(6)~~(5) Refrigeration facilities must be provided to assure the maintenance of potentially hazardous foods at 41 degrees Fahrenheit or below during storage. Frozen foods must be kept frozen and must be stored at a temperature of 0 degrees Fahrenheit or below.

Source: 7 SDR 66, 7 SDR 89, effective July 1, 1981; 15 SDR 162, effective May 4, 1989; 31 SDR 40, effective September 29, 2004.

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

Cross-Reference: Potentially hazardous food, § 44:02:07:18.

67:42:03:11.10. Railings. All floor and wall openings, open-sided areas, platforms, and decks which are 30 inches or more above the adjacent ground level must be guarded by a railing or barrier. ~~The railing must meet the local building code for height or be at least 34 inches high, whichever is greater. This guard rail must have intermediate rails or an ornamental pattern such that a sphere four inches in diameter cannot pass through any opening~~The railing or barrier shall be constructed to prevent a child from crawling or falling through or becoming entrapped.

Source: 7 SDR 66, 7 SDR 89, effective July 1, 1981; 15 SDR 162, effective May 4, 1989; 21 SDR 206, effective June 4, 1995; 31 SDR 40, effective September 29, 2004.

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

67:42:03:12. Sanitation requirements. A family day care home must be kept clean, neat, and free of litter and rubbish.

If care is provided to infants, the home must have a diaper changing table or pad that has a surface that is easily cleanable and nonabsorbent. The table or pad must be cleaned after each use with a solution of one ounce of household bleach to one quart of water.

If a toy comes in contact with a child's saliva or other bodily fluids it must be sanitized with a solution of one ounce of household bleach to two gallons of water or washed and rinsed in a mechanical dishwasher.

If a provider finds a product that the provider prefers to use instead of bleach, the provider shall submit the product label to the department. The department, in consultation with the Department of Health, shall review the product and make a determination of whether the product and the provider's established procedures for using the product is an effective and acceptable disinfectant for a child care program.

Hazardous cleaning solutions, chemicals, and poisons must be labeled and kept in an enclosed cabinet that is not accessible to children.

Garbage and refuse must be kept in durable, easily cleanable containers that do not leak and do not absorb liquids. Garbage and refuse must be disposed of often enough to prevent the development of odor and the attraction of insects and rodents.

~~Sewage must be disposed of by means of a public sewage disposal system or a septic system and may not constitute a source of contamination of food, equipment, or utensils or otherwise create an unsanitary condition or nuisance.~~

Source: 4 SDR 2, effective July 25, 1977; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 10 SDR 48, effective November 21, 1983; 15 SDR 162, effective May 4, 1989; 31 SDR 40, effective September 29, 2004.

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

67:42:03:13. Nutrition requirements. If a child is in family day care during the home's regular meal time, the child must be offered a meal which consists of a variety of foods ~~from the food guide pyramid food groups and~~ which supplies at least one-third of the child's daily nutritional needs. Nutritious midmorning, midafternoon, and evening snacks must be served between meals as long as there are at least two hours between each meal and snack. Breakfast may be substituted for the midmorning snack. The provider must prepare and post menus of the meals available at the home for the week and must record on the menu the food actually served. The provider must retain the menus for a period of six months after the week for which it was prepared.

Infants must be fed according to their individual schedule and must be held while bottle feeding.

Source: 4 SDR 2, effective July 25, 1977; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 15 SDR 162, effective May 4, 1989; 21 SDR 206, effective June 4, 1995; 31 SDR 40, effective September 29, 2004.

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

67:42:03:16. Discipline. Discipline techniques used must offer clear-cut limits and direction to help a child to develop self-control and respect for the rights of others. Discipline techniques must be appropriate to the child's age and developmental level. Separation, when used as discipline, must be within sight and hearing range of a staff member responsible for caring for children. Discipline may not be delegated to older children or peers. Humiliating or frightening punishment such as the following are prohibited:

- (1) Spanking, hitting, pinching, biting, shaking, or inflicting any other unusual physical punishment;
- (2) Verbal abuse, threats, or derogatory remarks about self or family;
- (3) Restriction of movement or confinement. A child may not be isolated in a locked room ~~or closet by binding or enclosure in a confined space such as a closet, locked room, box, or similar cubicle;~~
- (4) Punishment for lapses in toilet training;
- (5) Withholding or forcing of meals, snacks, or naps; and
- (6) Use of substances such as soap, pepper, or hot pepper sauce for punishment of undesirable behaviors.

Source: 10 SDR 48, effective November 21, 1983; 31 SDR 40, effective September 29, 2004.

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

67:42:03:20. Water safety. Children may not play in areas where there is any body of water unless they are under constant supervision. A body of water includes pools, hot tubs, fish ponds, ditches, animal watering tanks, tubs, pails, sinks, toilets, or any other area which presents a drowning risk to young children.

Swimming pools located on the premises of the provider's home and not emptied after each use must be secured on all sides with a fence that is at least five feet high and constructed to discourage climbing. ~~If a chain-link fence is used, the fence must be constructed of chain link that does not exceed one and three quarters inches.~~ A wall of the home may not be considered as one side of the fence if that area of the house has access to the pool area. Exits from and entrances to the pool must have self-closing, latching gates that must be latched and locked at all times when day care children are present. If the home has a hot tub, the tub must be covered with a safety cover approved by the American Society for Testing and Materials (ASTM).

Source: 21 SDR 206, effective June 4, 1995; 31 SDR 40, effective September 29, 2004.

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

67:42:03:23. Sleeping arrangements – Cribs. Each child must be provided with or must bring a mat or blanket to be used during nap or rest periods. A provider may not allow a child to nap or rest directly on bare or carpeted floors.

If nighttime care is provided, the provider must provide a cot or bed for each child in nighttime care.

Cribs and mattresses must be maintained in good repair. ~~Cribs must have slats that are spaced no more than two and three-eighths inches apart and the height from the top of the mattress to the top of the crib rail may not be less than 20 inches when the rail is in its highest position.~~ Stackable cribs may not be used.

Soft bedding materials that could pose a suffocation hazard may not be used in cribs or playpens.

Infants must be placed on their backs for sleeping.

Source: 31 SDR 40, effective September 29, 2004.

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.